97-84080-29

Burns, John Morgan

Why Taft vetoed the Webb Kenyon Act...

Montgomery, [Ala.]

c1930

97-84080-29
MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD

308
Z
Box 255

Burns, John Morgan
Why Taft vetoed the Webb-Kenyon act. Why Wilson vetoed the Volstead act. A historical discussion disclosing the effect of the blunders which have been made by the Supreme court, Congress and temperance in their dealings with liquor traffic, by John Morgan Burns ... Montgomery, Alabama., Wilson, c1930.
cover-title, 15 p. 23 cm.

Presentation copy with author's inscription.

RESTRICTIONS ON USE: *Reproductions may not be made without permission from Columbia University Libraries.*

TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 10:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 5-8-97 INITIALS: PB

TRACKING # : 23926

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

Through the Prohibition Office
2-17-W

Why Taft Vetoed
The Webb-Kenyon Act

308
Z
Box 255

Why Wilson Vetoed
The Volstead Act

A HISTORICAL DISCUSSION DISCLOSING THE EFFECT OF THE BLUNDERS WHICH HAVE BEEN MADE BY THE SUPREME COURT, CONGRESS AND TEMPERANCE IN THEIR DEALINGS WITH THE LIQUOR TRAFFIC.

Compliments of the Author.

By JOHN MORGAN BURNS
SELMA, ALABAMA

COPYRIGHT, 1930

THE AUTHOR, IN CO-OPERATION WITH ANY LOCAL CLUB OR ORGANIZATION, INVITES AN OPPORTUNITY TO DISCUSS OR DEBATE THIS GREAT MORAL ISSUE IN YOUR COMMUNITY.

WILSON PTG. CO. MONTGOMERY

Feb. 20, 1980 DA

WHY TAFT VETOED THE WEBB KENYON ACT AND WILSON VETOED THE VOLSTEAD ACT

I was born and raised in Alabama, by geography, environment and education I am a Democrat, in religion a Baptist, and a Mason. I have always been opposed to the saloon and the liquor traffic. For more than twenty years in Alabama I gave my time and money aiding every effort that was made to drive the saloon out of my State. I never sought, I never accepted a dollar's consideration for any service rendered in the long drawn bitter struggle. I am now opposed to the saloon. I thought then, and I think now, that as a citizen of a State I am within my constitutional and moral rights in using my influence and casting my ballot to keep intoxicating beverages out of my State. I believed then, as I believe now, that each State is and should be sovereign over the liquor traffic; that each State should have the right through the suffrage of its own citizenship to determine for itself its policy with respect to the liquor traffic. If the Eighteenth Amendment were modified or abolished I would oppose with heart and soul any and every effort which might be made to bring the saloon back or to legalize the sale of any intoxicating beverages in my State by any profit making agency, private or public. I am a friend of Temperance and I feel that I have the right to cast my ballot to determine the policy of my State with reference to the liquor traffic. But I also believe that the liquor traffic falls under the police power of the State and that my loyalty to the preservation of the great principle of Local Self Government restrains me from exerting my influence or casting my ballot for the purpose of impressing upon another State compulsory prohibition against the wish and will of its people. I believe that in 1888 most of the best lawyers, as well as a great majority of the thinking American people, believed that each State should have and did have, under the Constitution of the United States, the power to regulate or prohibit, as it saw fit, the liquor traffic within its borders; and that whenever a majority of the voters of a State decided to legislate liquor out of its borders that they could do so without the aid of Congress or any other State or States.

It is readily conceivable that any and every sacrifice which would actually result in the utter extinction of aclohol as a beverage would be accepted cheerfully by all good people. If the Eighteenth Amendment, as drawn, and all of its concomitant National legislation has destroyed or will destroy or is even reasonably calculated to destroy the liquor traffic in our country, then, in God's name, let's cling to them, for

such results are worth infinitely more to us and to the Nation than all the theories, policies and principles of Government combined.

We have had the Eighteenth Amendment with its nationwide compulsory prohibition as a part of the organic law of the land for more than eight years. Perhaps of all the arguments advanced by its proponents for making it a part of the Constitution, the most persuasive was their contention and belief that by so doing it would forever take the liquor problem out of politics. Now we all know that it has failed to accomplish that laudable purpose, because it is today the most stubborn and exasperating issue in the country's political life. Both friend and foe of the Eighteenth Amendment is dissatisfied with existing conditions. Everywhere its friends claim that it has not produced satisfactory results because it has not been enforced and are busy insisting upon more drastic enforcing statutory machinery, while its opponents, more numerous and more determined than ever, contend that it will not be enforced, and more aggressively than ever are clamoring for its revision.

Undoubtedly nine years' experience shows that there is something wrong with the Eighteenth Amendment as it is drawn.

A careful, honest and dispassionate consideration of the accumulated evidence is interesting if not convincing. We find that the legislature of New York, obviously responding to the overwhelming majority sentiment of its people officially expressed, unterrified by the charge of nullification, deliberately repealed all State prohibition laws; that the people of New Jersey persist in electing dripping "wets" as United States Senators.

It may be said that these protests emanate from the rum-ridden big cities of the East and are inspired by the high percentage of foreign born voters. If these were all the protests against the Eighteenth Amendment as drawn the country could afford to disregard them, but we further find that everywhere and every time Organized Labor holds a convention a ringing protest is made against National Bone Dry Prohibition. In a very recent election in the far West in the State of North Dakota, in which 205,000 votes were cast, 100,000 of them, emulating the precedent established in New York, favored the repeal of all the Prohibition laws in that State; that the American Bar Association in its National convention, representing every section of the United States, embracing in its personnel the very cream of American intelligence, has overwhelmingly declared that the Eighteenth Amendment, as drawn, was a monumental mistake. A majority of the Episcopal ministers of the United States have

said that in their opinion the Eighteenth Amendment, as drawn, should be modified because it was impracticable, and they were convinced it would never be enforced.

The Democratic party, warned by Democratic dry leaders that the nomination of a Revisionist would disrupt the party or bring it to sure defeat, sent more than 700 delegates from 38 different States to the Houston Convention instructed to vote for a candidate whom they knew, thought that the Eighteenth Amendment should be revised. Notwithstanding the predicted disaster by the political "drys" the ensuing election returns showed that the Revisionist candidate, carrying, as he did, many other handicaps, received 16,000,000 votes or about 40% of the total vote cast. Thousands, tens of thousands,—probably hundreds of thousands of Democrats and Republicans deserted their respective parties simply because they believed the Eighteenth Amendment was and is the paramount political issue. Is there a reason for this deep-seated, widespread dissatisfaction with National Bone Dry Prohibition? The history of the Temperance movement in our country answers the question.

In 1888 the liquor traffic was in the saddle insolent, vicious, brutal. The saloon, its most sinister influence was well nigh ubiquitous, sapping, demoralizing, corrupting and impoverishing the country and almost everywhere the dominating vicious political power. About that time the farsighted, God-serving and God-fearing people of Iowa, after patient and prayerful investigation, became convinced that the sale and use of intoxicating beverages in that State was undesirable, and acting upon that conviction an overwhelming local public sentiment decided to outlaw the liquor traffic.

Iowa's legislature, believing that it was acting within its federal constitutional rights, and within its inalienable and imprescriptible police power over everything which **per se** menaced the health, peace and morals of its people, passed a sweeping prohibition law designed to prevent the sale of liquor within its borders. The liquor interests promptly challenged the constitutionality of that Statute and resisted its enforcement on the contention that the State, under the Commerce Clause of the Federal Constitution, was without power to prevent the shipping of liquor from another State into Iowa for the purpose of resale and consumption there as long as such liquor was offered for re-sale by the importer in the original package. Of course the contention was first raised in the State court. The Supreme Court of Iowa in good faith and correctly held that the statute was constitutional; the liquor interests carried the case from the Supreme Court of Iowa to the Supreme Court of the United States in what is known as the now famous case of **Bowman vs. The**

Chicago & Western Railway Co. Vol. 125 U. S. Sup. Ct. Rep. p. 465. Six members of the United States Supreme Court practically held that under the Commerce Clause of the Federal Constitution liquor was a **legitimate article of interstate commerce,** and that no State had the power to prevent a citizen from another State from carrying or shipping liquor into its borders and offering the same for sale therein as long as the liquor was owned by the importer and was in the original package.

Let us concede that those six learned Supreme Court Judges were acting under an environment entirely different from that of today, and were, no doubt, in good faith following the liquor-dimmed lights about them; nevertheless, we are justified in saying now that six members of the United States Supreme Court in the year 1888 solemnly decided that in a legal sense they could not see or find any legal difference or distinction between a **gallon of liquor** and a bushel of **wholesome corn.** While it does not reflect upon their integrity, nevertheless it throws a shadow upon their intelligence when we see that the other three judges of that great Court, Justices Harlan, Waite and Gray, who were moving under the same lights and environment, fundamentally differed with them and had no trouble whatever in finding a radical difference between a bushel of sound corn and a gallon of rum. Justice Harlan's great dissenting opinion in that decision will convince the most skeptical, honest student of the law, that there is a substantial difference. In that dissent, the great Justice says:

> "The reserve power of the State within the constitution to guard the health, morals and safety of its people is more vital to the existence of society than their power in respect to trade or commerce'

In 1890 another phase of the same Iowa statute was carried to the United States Supreme Court by the liquor interests in the now famous case of **Leisy v. Harding, U. S. Sup. Ct. Rep., Vol. 135, p. 100.** In the meantime one of the members of the Court had died and Justice Brewer of Kansas was filling his place. Six members of the new court, following the former case, again held that there were material limitations under the Federal Constitution upon the State's power to control the liquor traffic within its borders. Yet in the face of that precedent Justices Gray, Harlan and the new member, Brewer, filed a vigorous dissenting opinion upholding the sovereignty of the State with respect to the liquor traffic. Justice Harlan, in his luminous dissenting opinion, uses the following language:

> "Common experience has shown that the general and unrestricted use of intoxcatng beverages tends to produce idle ness, disorder, disease, pauperism and crime, and under the constitution falls clearly within the police power of the State. * * * If the statutes of a state regulating or prohibiting the sale of ntoxicating beverages within its borders are to be held void as applied to liquors sent or brought from another State and sold by the importer in the original package, the result is an inhabitant of any state may, under the pretext of interstate commerce, transport and sell liquor in any or all of the other States against the wish or will of such state or states. * * * It would require positive and explicit legislation on the part of Congress to convince us that the Constitution contemplated or intended such a result."

Whether right or wrong, in 1890, the Supreme Court of the United States in the two foregoing decisions solemnly declared that the State could not protect itself from invasion of liquor from another State without the aid of Congress; that the State of Iowa in order to banish liquor from its borders had to have the assistance and vote of a majority of the members of Congress. The sovereign State of Iowa could only banish rum when it had gotten enough Congressmen and Senators from other States to insure the passage of favorable legislation.

Friends of Temperance, grasp and hold this very important fact that in the year 1888 and again in 1890, thirty-nine years ago, six of the nine United States Supreme Court Judges stunned the friends of Temperance and seriously aroused the apprehension and resentment of millions of American citizens, who were devoted to the great principle of Local Self Government and the preservation of States' Rights, by announcing the unexpected doctrine that no State could banish liquor from its borders without begging Congress for permission to do so. As soon as the Nation sensed the significance and far-reaching effect of those decisions, the struggling cause of Temperance immediately won the political support of thousands, yes hundreds of thousands of believers in Local Self Government and States' Rights, who though indifferent with respect to legal prohibition were at the same time determined to force Congress to reclothe the State with the power to control or prohibit the liquor traffic as each State might determine within its own borders, by subjecting the liquor traffic to its police power, and, above all, to vindicate and preserve an important part of the American magna charta, to-wit, the vital inviolable and invaluable principle of Local Self Government, with the State as the maximum unit for its exercise.

It was then that Temperance, Local Self Government and States' Rights combined and initiated their death grapple with a rum ridden Congress for the restoration of States' Rights and a Constitutional status under which Temperance could fairly and ultimately successfully carry on its war with the brutal liquor traffic. These great factors began to mobilize their joint forces and to train their guns upon Congress for the purpose of wrestling its control from the domination of the liquor interests.

Yielding to their joint pressure, on August 8, 1890, Congress, at that time much more enamored of the idea that the State should be the absolute master of liquor traffic within its own borders than it was of the idea that legal prohibition should prevail in the United States, or, for that matter, in any State, quickly passed an Act (commonly known as the "Wilson Act")entitled: "An Act to Limit the Effect of the Regulation of Commerce Between the Several States and with Foreign Countries in Certain Cases," reading as follows:

> "Be It Enacted by the Senate and House of Representatives of the United States in Congress Assembled, That all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein, for use, consumpton, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

The passage of this Act filled the hosts of Temperance with great joy because they believed and had every reason to believe that now the dry State could protect itself against the demoralizing and vicious competition of the outside brewer and distiller, who had been flooding it with alcoholic beverages. The spirit of Local Self Government was greatly pleased with the victory which it had won in the restoration of State sovereignty over a subject matter which clearly fell under the State's police power.

Temperance militantly and enthusiastically resumed its slow but effective moral and educational activities under the banner of State Rights.

Imagine their surprise, sorrow and resentment when the Supreme Court decided that the Wilson Act, as drawn, was not broad enough to accomplish the purpose for which it was designed. In the case of **In Re Rohrer, 140 U. S. Rep. p. 554** (October, 1890) the Court held that while the Wilson Act en-

abled a State to prevent the resale of imported liquor in the original package within its borders, nevertheless it was not broad enough to enable the dry State to restrain the importation of liquors by its inhabitants for personal consumption.

When the country was informed by the Supreme Court that the Wilson Act did not clothe the State with the power to prevent the importation of liquors by its inhabitants for personal consumption, and had failed to forbid and penalize under federal law the shipment of liquor from a wet State into a dry State, the faithful and unterrified Friends of Temperance again sought the assistance of States' Rights, the Anti-Saloon League increased its activities, sought and received larger contributions, multiplied its high salaried employees, put on the hustings many of the country's finest orators, including Richmond Pierson Hobson and William Jennings Bryan. Some of the Protestant churches and many Protestant preachers entered the political arena. The friends of Local Self Government and State Rights everywhere became more and more determined to make Congress exhaust its power to confer upon the State absolute control of the liquor traffic within its borders. Here and there and from time to time a wet Congressman was kicked out and a dry Congressman put in his place, and this process of elimination went on and on for more than twenty-two years, when in 1913 Congress, with the approval of Champe Clark, Woodrow Wilson, Oscar Underwood, and the legion of loyal State Righters, who never believed in the policy of legal prohibition, passed the following Act, commonly known as the Webb-Kenyon Act:

> "An Act Divesting Intoxicating Liquors of Their Interstate Character in Certain Cases.
>
> Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the shipment or transportation in any manner or by any means whatsoever of any spirituous, vinous, malted, fermented or other intoxicating liquor of any kind, from one State or Territory or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, into any other State, Territory or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States or place noncontiguous to, but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold or in any manner used either in the original package or otherwise in violation of any law of such State, Territory, or District of the

United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

This Act made the State absolute master of liquor traffic within its borders and at the same time penalized under the Federal statutes the shipment or transportation of liquor into a dry State. With its passage the conservative advocates of Temperance, of Local Self Government and State Rights were satisfied provided that Act was safeguarded by appropriate amendment to the Constitution which would forever restrain its repeal by any subsequent hostile Congress. Therefore the Eighteenth Amendment should have merely declared the supremacy of the State over the liquor traffic and committed Congress to lend its aid to the enforcement of its prohibition laws by penalizing the shipment of liquor from a wet State into a dry State.

But the political parson, whose notoriety, and the mercenaries of the Anti-Saloon League, whose fat salaries depended upon continuous agitation, clamored for more. And by that time the leadership of the Anti-Saloon League had discovered that the weak-kneed politicians of the country had been thoroughly intimidated and that Congress had been filled with its political puppets whose sole qualification for that great office, whether drunk or sober, was their physical ability to proclaim in season and out of season: "I am bone dry. What do I care for Local Self Government or State Rights?" Thereupon the Anti-Saloon League decided by constitutional amendment and supplementary statutory law to drive the liquor traffic out of **every** State in the Union. Under its leadership the Eighteenth Amendment providing for compulsory Nation-wide prohibition was submitted. Unfortunately the World War came on about that time. 4,000,000 of our boys had been drafted for military service. More than 1,000,000 of them were Overseas in the trenches or on the firing line. Anxiety filled the minds and hearts of the people. Everybody, except a few profiiteers and the leaders of the Anti-Saloon League and the shallow pated, weak kneed politicians, were straining every nerve to win the War. It was under such conditions that the Eighteenth Amendment, as written, was submitted. It was under these harrowing conditions, when our boys were fighting on foreign battle fields, when our mothers and fathers were thinking more about the safety of those boys than they were about political conspiracies designed to destroy State Rights, that the Eighteenth Amendment, was pressed upon the States for ratification. Then came the Volstead Act, falsely proclaiming that any alcoholic content in any beverage exceeding ½ of 1% is intoxicating. Woodrow Wilson vetoed the monstrosity. A war crazed and Anti-Saloon League-terrorized Congress passed it over his veto. We won the War. The public mind rapidly recovered from its hysteria. Then millions of the best citizens of this country, the very cream of its moral and intellectual life began to realize that the political power which the States' Rights sentiment had helped to build up in the country had stripped the wet State of that same sovereignty over the liquor traffic which, when the liquor traffic was in power, it had denied to the dry State; that the political power which Cleveland, Wilson, Champe Clark, Morgan, Pettus, Underwood and the uncompromising champions of States' Rights and Local Self Government everywhere had wrested from the clutch of the liquor traffic, had been transferred to the despotism of the Anti-Saloon League.

I have said it, I repeat it that the decisions of 1888 and 1890 were legally and politically erroneous and morally wrong. Let me submit the proof: In 1888 and 1890 three of the nine Judges of the Supreme Court in a strong dissenting opinion told the other six members that their decision was wrong, absolutely wrong; that the liquor traffic fell under the police power of the State; that each State had the right to control or prohibit the liquor traffic in its borders without the permission or assisance of Congress or any other State.

Later in 1890, a liquor Congress, yielding to wholesome public sentiment, passed the Wilson Act for the avowed purpose of again subjecting the liquor traffic to the State's police power.

Later on the Supreme Court, with the changes wrought in its personnel, by death, resignation or retirement, clearly saw that lottery tickets, a notorious gambling device, were **per se** inimicable to public morals, which could be differentiated from wholesome and innocuous articles of interstate commerce and should and could be probihited by Congress from passing over State lines. Congress, with the approval of the Supreme Court, and without constitutional amendment, quickly and successfully suppressed the Louisiana Lottery.

Still later Congress, with the Supreme Court's approval and without a constitutional amendment, outlawed the opium traffic in interstate trade because opium was obviously a menace to public health and morals.

When the Supreme Court held that the Wilson Act of 1890 was not broad enough to shield the dry State from the invasion of liquor from other States, after twenty years wrestling with Congress for effective legislation, Congress passed the Webb-Kenyon Act and then passed it again over President Taft's veto. The Supreme Court held that Act was constitutional solely on the ground that liquor, on account

of its inherent evil tendencies, could and should be differentiated from wholesome articles of interstate commerce.

Chief Justice White, speaking for the Court, said in **Clarke Distilling Co. vs. Western Maryland Railway Company:**

> "The dread expressed that the power by regulation to allow State prohibition to attach to the movement of intoxicants lays the basis for subjecting interstate commerce in all articles to State control and, therefore, destroy the Constitution, is unfounded. The exceptional nature of liquor here regulated is the basis upon which the exceptional power exerted must rest and affords no ground for any fear that such power may constitutionally be extended to things which it may not embrace."

President Taft believed that the decisions of 1888 and 1890 were erroneous but as a great and logical lawyer, loyal to the doctrine of **stare decisis,** he, necessarily, held that those decisions, however erroneous, until reversed or modified by the Court, were the law of the land; and he also held that Congress did not possess the power to deprive **any article of interstate commerce** of the protection which the Constitution conferred upon it.

The Supreme Court, in considering the constitutionality of the Webb-Kenyon Act, was necessarily greatly embarrassed by those decisions. While it did not relish the idea of directly over-ruling them, nevertheless the Court was not willing to declare that Congress possesses the power to deprive a legitimate, a wholesome article of interstate commerce of the protection of the Constitution. A majority of the Court handled the situation in a very clever manner: They held, with President Taft, that Congress did not have the general power to deprive wholesome commodities of the protection of the Interstate Commerce Clause of the Constitution but that Congress did possess the power to strip liquor, as well as lottery tickets and opium, of the protection which the Constitution generally conferred upon **other** commodities, because liquor, as well as lottery tickets and opium, could be readily differentiated from wholesome and harmless commodities, in that liquor was inherently an injurious article and was a menace to the public peace and morality. In other words, lawyers readily understand that the Supreme Court in 1916 in Clarke Distilling Company v. Western Maryland Railway Co. (Vol. 242 U. S. Rep. p. 330), with only two dissenting judges, practically over-ruled the decisions of 1888 and 1890. In so holding the Supreme Court merely followed the reasoning which the Court had previously applied in the Lottery and Opium Cases.

Some of the leaders of the Anti-Saloon League assert that

prior to the Eighteenth Amendment, every legal method proposed for the elimination of the liquor traffic in the United States had been exhaustively tried out and found utterly unsuccessful. This broad claim is not sustained by the history of the prohibition movement in our country. History will show that state-wide prohibition under favorable conditions has never been fairly and thoroughly tried out. From 1888, when the Supreme Court, in a divided opinion, held that liquor was a legitimate article of interstate commerce and, as such, was entitled to the protection of the Commerce Clause of the Constitution, and had the right, regardless of State laws, to move from State to State, for the purpose of sale and consumption therein in the original package, down to the year 1913 when Congress, freed from the domination of the liquor interests, by appropriate legislation, now known as the Webb-Kenyon Act, stripped liquor of its interstate character and subjected it to State control, it was utterly impossible for any State to give State-wide prohibition laws a thorough test, because during those twenty-five years, the State Government was denied the power to prevent the importation of liquor from another State by its inhabitants for their personal use.

Again, from 1913 to 1918, the five years intervening the passage of the Webb-Kenyon Act and the submission of the Eighteenth Amendment, the Fanatics and Mercenaries of the Anti-Saloon League were more busily engaged in building up a political machine for the submission and raitfication of the Eighteenth Amendment, **as drawn,** than they were in trying to build up public sentiment in the several States for the enactment and enforcement of State-wide prohibition laws. The whole history of the Prohibition movement clearly and emphatically shows that the political agitation carried on during those five years under the leadership of the Anti-Saloon League, deprived the cause of Temperance of the invaluable opportunity fully and fairly to test the efficacy of State-wide prohibition as a remedy for the universally admitted evil of the liquor traffic.

I remember when the legislature of Alabama passed a State-wide prohibition law some saloon keepers in my native town moved their business to neighboring wet States and, under the sheltering wing of the decision of 1888, continued to solicit orders and ship liquor to their old customers into the dry State of Alabama.

Recently a reformed saloon keeper, who had drifted into a better business, in a side-walk argument, asserted in my presence that Prohibition under States' Rights had been tried and was a complete failure. I asked him if State-wide Prohibition in Alabama had not failed because he and others had

moved their liquor business into a neighboring wet State for the purpose of selling and shipping liquor back to their old customers in Alabama. The only answer I received was the laughter of the bystanders who knew his history as well as I.

The legislature of Alabama passed a State-wide prohibition law which found general public approval. The enthusiastic votaries of Temperance, flushed with that great victory and encouraged by ambitious Anti-Saloon League employees, selfish politicians seeking political power and spoils, cried out for a constitutional amendment. Over the protest of the conservative but true friends of Temperance, such an amendment was submitted to the people. After one of the bitterest campaigns in the political history of the State, in which the cause of Temperance suffered severely, the people repudiated the amendment by a crushing majority vote and the ensuing legislature brought the saloon back into Alabama, and thus it was shown that while the people were willing to try out statutory State-wide prohibition, they preferred to test its efficacy before making it a part of their constitution.

Many Temperance leaders, including Mrs. Willebrandt, boldly and confidently assert, that the dispensary system under State control was shown to be an ignominious failure by the South Carolina experiment. This assumption is absolutely unfair because a summary of the history of the South Carolina dispensary will show convincingly that that great experiment was shot to pieces simply because at that time the distiller and the brewer of other States, (the natural enemy of any effective Temperance movement), under the Commerce Clause of the Constitution of the United States, as interpreted by six of the nine Judges of the Supreme Court, in their erroneous and far-reaching decision of 1888, were permitted to sell and ship their liquors into South Carolina to its inhabitants for personal use in competition with the dispensary, against the wishes and over the protest of its people. This vigorous and vicious competition, armed, as it was by the Supreme Court, with the Constitution of the United States, obviously destroyed the dispensary movement in the country.

Let the "doubting Thomas" read the case of **Scott vs. Donald,** 165 U. S. Rep. p. 68, in which that Court said:

> "The South Carolina statute is not an inspection law. Its prohibition of the importation of wines and liquors from other States by citizens of South Carolina for their own use is made absolute and does not depend upon the purity or the impurity of the articles. Under it only State officers are permitted to import such intoxicating beverages and thus those citizens who

> wish to use foreign wine and liquor are deprived of the exercise of their own taste and judgment in the selection of these beverages."

You cannot travel open mindedly and extensively in New York, Pennsylvania or New Jersey and mingle intimately with their people in all walks of life, as I have done recently, without being overwhelmed with an abiding conviction that from 50% to 75% of the public sentiment in those populous States is entirely out of sympathy with both the spirit and the letter of the Eighteenth Amendment as it is written.

Why all the boasting and insisting that our Government consists of an indissoluble union of indestructible States if its invaluable dual character is not exemplified in practice as it is admitted in theory? The rivers of fratricidal blood that incarnadined the battlefields of the Civil War have flowed in vain if, for any reason this side of **absolute National necessity,** the vital and essential doctrine,—yea the great principle of State Rights and Local Self Government is disregarded or seriously impaired.

Surely in that grim gory struggle the flaming sword protrayed in deathless colors the invaluable and inviolable distinction between National and States' Rights—between Empire and Republic.

Not long ago in the big auditorium of the largest Methodist church of Brooklyn, N. Y., while debating the advisability of revising the Eighteenth Amendment, my opponent, observing that the facts and arguments herein set forth were making a profound impression upon that large gathering of intelligent Christian men and women, in reply attempted to ridicule the idea that Temperance and Prohibition could prosper under the limitation of State Rights. He boldly asserted that Prohibition could not exist in any State if its neighboring State was wet. He fairly shouted that the hosts of Temperance, who were wedded to the policy of legal prohibition, would rather surrender all the States to the liquor traffic than to permit the legal sale of intoxicants in any State. I wish you could have seen his confusion and heard the laughter of that audience when I said: "Sir, if you mean what you have said, if you reflect correctly the prohibition sentiment of the country, then tell us what will become of Prohibition in the American States that touch the Canadian and Mexican borders? Do you concede that Prohibition is doomed in those States that touch wet territory?"

History shows that the people of thirteen States thought otherwise when they adopted State-wide Prohibition without the power to prevent the importation of intoxicants by their inhabitants for personal use; that Kansas, a great majority

of whose people were earnestly, honestly and sincerely in favor of Prohibition prior to the passage of the Webb-Kenyon Act in 1913, prior to the ratification of the Eighteenth Amendment in 1919, surrounded, as it was, by dripping wet States, subjected as it was to the ruthless invasion of rum by the erroneous decision of 1888, established and maintained a more effective and satisfactory dry status than Kansas has ever had or can ever hope to have under the Eighteenth Amendment and the Volstead Act. And many other States, reflecting an overwhelming local public sentiment, had established and were slowly but successfully enforcing State-wide prohibition laws before the ratification of the Eighteenth Amendment. Looking backward, judging the future by the past, the foregoing facts clearly indicate that the leadership of Temperance, with the assistance of the Webb-Kenyon Act and its approval by the Supreme Court in 1916, could have by this time written, with sustaining local public sentiment, State-wide prohibition laws in thirty-six States, and make it apparent that the leadership of Temperance should not have insisted upon constitutional National prohibition until public sentiment, in good faith, had written and successfully maintained State-wide prohibition in at least thirty-six States.

It is very clear now that Nation-wide Prohibition cannot be successfully enforced in wide populous areas of the United States where wet sentiment predominates without resort to martial law.

The historical data, hereinbefore set forth, clearly shows that Temperance has been the victim of many blunders: In 1888 the Supreme Court blundered; in 1890 Congress blundered in its effort to correct the judicial blunder of 1888. In 1913 Congress corrected its blunder of 1890. In 1916 the Supreme Court corrected its blunder of 1888. All of these blunders were matters entirely beyond the control of Temperance leadership. The indomitable and unconquerable spirit of State Rights successfully assisted Temperance in its longdrawn struggle to correct them. All of these blunders strengthened and promoted the cause of Temperance in that they inspired and sustained the marvellous moral and intellectual activities carried on by the faithful Christian womanhood of America, which have characterized its splendid fight against the liquor traffic.

In 1918 Temperance itself blundered by insisting upon Congress submitting a Nation-wide prohibition amendment. Then came the most pathetic and tragic blunder of all: the legislatures of more than twelve States, including New York, New Jersey, Pennsylvania and Wisconsin, containing more than half of the country's population, ratified the Eighteenth

Amendment when they knew or should have known that they were not reflecting the wish and will of their respective constituencies with respect to the adoption of Nation-wide constitutional prohibition. Seldom, if ever before, in the history of representative government have any legislative bodies so fresh from the people, so thoroughly misunderstood and misrepresented the wish and will of their constituencies.

Subsequent events in those States have demonstrated that as a result of that blunder, we have the Eighteenth Amendment which has never been ratified by sufficient public sentiment to sustain and enforce it. It is regretable, it is deplorable, nevertheless it is true that the Eighteenth Amendment, as drawn, was ratified by many legislatures infected with War hysteria and unduly influenced by the unwise political pressure applied by the leadership of the Anti-Saloon League.

The hasty, inconsiderate and misrepresentative action of these State legislatures with respect to the ratification of the Eighteenth Amendment has precipitated for Temperance the most serious problem which it has ever encountered. Now there is a widespread conviction in the ranks of Temperance that a big mistake has been made. Believing with Thomas Jefferson, that deep and always optomistic thinker that "Error is harmless provided reason is left free to expose and combat it," and with Henry Clay that "It is never too late to recede from wrong," and that mistakes should be rectified as soon as discovered, the country's sober, serious and unprejudiced public sentiment will revise the Eighteenth Amendment over the protest of the fanatic, the demagogue and the boot-legger.

American intelligence will not ignore the warning fact which Experience has written on the face of human psychology that sound, enduring and enforcible legislation cannot safely travel faster than the moral and intellectual evolution of the people which it is designed to govern.

Wholesome public sentiment has crystalized in the conviction that the revision of the Eighteenth Amendment, restoring to the people of each State the right to deal as they see fit with the liquor problem, will not hurt the cause of Temperance nearly as much as the retention of Nation-wide prohibition laws which will not be enforced. We all know that the National prohibition laws were violated yesterday, are being violated today, and will be violated tomorrow in every county in every State in the United States; that these laws cannot be enforced in wide populous unsympathetic areas in the United States without resort to martial law.

The negligible vote which the National Prohibition ticket has received in the past conclusively shows that Temperance

has won all of its splendid victories when it was working in cooperation with the spirit of Local Self Government and State Rights.

Fortunately the growth and welfare of Temperance does not involve the vicarious sacrifice of State sovereignty over the liquor traffic, does not involve jeopardizing White supremacy in the South, does not require the disruption of the Democratic party. That great army of intelligent men and women, who fought side by side with Temperance to keep the wet States from flooding the dry States with intoxicants, are mobilizing to so revise the Eighteenth Amendment that it shall harmonize, as they originally intended with the principle of Local Self Government and the preservation of States' Rights.

I am sure I express their sentiments as well as mine when I say I have fought twenty years side by side with the Anti-Saloon League, the political parson, the intelligent friends of Temperance, the splendid womanhood of America, and the defenders of Local Self Government and State Rights, to establish the safe, sane, just doctrine that forty-seven wet States should not, under the constitution of the United States, ship into or sell intoxicating liquors within the borders of a single dry State. Having won that great battle they, as I, now intend, if necessary, to fight twenty years more side by side with anybody and everybody who is willing to cooperate to prevent forty-seven dry States from ramming constitutional Prohibition down the throat of any State whose people do not want it.

MSH 23926

END OF
TITLE